

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

BRIAN MERCHANT,

Plaintiff,

v.

CIVIL ACTION NO. 1:23-00796

CHARLES GORE, Superintendent,
Stevens Correctional Center,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Joseph K. Reeder for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Reeder submitted to the court his Findings and Recommendation on January 23, 2025, in which he recommended that the District Court grant defendant's motion to dismiss and for summary judgment, deny plaintiff's petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254, dismiss this action with prejudice, and remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Reeder's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de

novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation or any other materials within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Reeder, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** defendant's motion to dismiss and for summary judgment, **DENIES** plaintiff's petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254, **DISMISSES** this action with prejudice, and directs the Clerk to remove this matter from the court's docket.

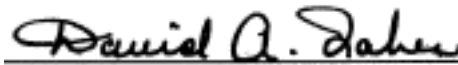
Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is

not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 4th day of March, 2025.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge